

A Study Paper of Maine NOW National Organization for Women

SEX OFFENSES – A Look at Proposals in the 123rd Maine Legislature (Feb., 2007)

The 123rd has over 40 proposals concerning sex offenses. NOW has most often favored public policy which concentrates on prevention and education, as well as support for survivors of violence, including sexual offenses.

Background:

In the past 30 years, particularly in the past 10 years, there has been a sea change in how society views violence against women and children. We understand a bit more about the kind of family dynamics that allow marital rape, incest, and other kinds of abuse (physical, verbal, behavioral), as well as patterns of abuse.

We have moved from the common 1970s sentiment, “Government can’t interfere in a man’s family,” to government support for shelters, hotlines and transitional services. Yet, half of our murders arise from domestic abuse, and the more insidious sexual crimes are still rarely reported and poorly understood.

Society’s sea change toward feminism uncovered such an unimaginable level of violence within families and other cherished

institutions, society is still reeling from the collective pain, and struggling with its public policy responses. As feminists spoke out for the individual rights of women and children, some amount of blaming the messenger as “anti-family” was probably inevitable. Yet over the years, this once radical idea, that “Government **must** interfere in families and wherever human rights are violated” has become more commonplace.

Feminism is the radical notion that women [and children] are people.

Sex Offenders: From another angle, we have been learning a bit about who sex offenders are, how they think, what drives their activities, possible successful interventions & treatments, and what types of public policies might facilitate our newer understandings. There are over 500,000 registered sex offenders nationwide. So, there are likely many millions not “in the system.” With a narrow focus on what to do with sex offenders, NOW asks what public policies exist so far? And what is possible?

Federal Government Responses: States were first required to maintain sex offender registries by the federal *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act of 1994*. Amendments to Wetterling include the **1996 Megan’s Law**, which requires states to provide notification to the community of a sex offender’s presence.

The **1996 Pam Lychner Sexual Offender Tracking and Identification Act** requires lifetime registration for recidivists and offenders who commit certain aggravated offenses. A **1998** amendment heightened some registration requirements, and state participation in the FBI's **National Sex Offender Registry (NSOR)**.

Passed in **2000**, the **Campus Sex Crimes Prevention Act** amends Wetterling, requiring sex offenders to report employment and enrollment in higher education facilities. The Office of Justice is charged with sex offender management. This includes the design of the **National Sex Offender Public Registry (NSOPR)**, linking the state registries. There is also a **Federal Agency TF on Missing and Exploited Children**, mandated in **1997**, which maintains a **CyberTipline**.

Feminist Responses: These include providing safe houses, shelters, hotlines, and resources to survivors of rape, incest, violence, and other abuse. Feminists assert that as a society, citizens have an obligation to help each other when help is needed. NOW knows what many young runaways ran from. So we support everything from parenting programs to science-based sex education; from teen centers & shelters to substance abuse programs.

NOW knows how fear, discrimination, and lack of resources can land women and children in shelters or on the streets. NOW supports transition services for displaced homemakers, a minimum wage that is a livable wage, improved

access to childcare, affordable education, and universal health care.

Feminists see the connections between all these things and more. Now, we hope to be among those moving the discussion to higher ground about what to do with sex offenders.

Maine: The 123rd will deal with numerous "sex offender bills." Until recent years, this topic was not discussed in any way that might lead to positive public policy. In more sensationalized cases, there are often calls for various extreme punishments. But, in 2007, some people are sitting down at the table to **figure out how, with the usual limited resources, we might set some sound public policy priorities.**

Maine Reports: Two very thoughtful reports generated from the Maine Legislature have tried to address the issues: most recently, the **January 2004 Report of the Commission to Improve Community Safety and Sex Offender Accountability** (hereafter "**The Safety Report**"), chaired by Sen. Pam Hatch & Rep. Sean Faircloth; and, the **1998 Joint Select Committee to Implement a Program for the Control, Care and Treatment of Sexually Violent Predators**, chaired by then Sen. Robert Murray of Bangor & Rep. Richard Thompson of Naples. The recent report credits the former, agreeing in many of its recommendations.

The Safety Report is available at <http://www.state.me.us/legis/opla>

NOW sees two major areas of concern:

The vast majority of sex offenders are “invisible.” They are never brought to public attention, even those who are known to individuals, families, or friends of the sex offender.

It may seem as though we should then concentrate on those who do come to public attention. But NOW disagrees.

The silence of so many sex offenders who want help, and the silence of their families & friends, must inform our public policy.

First, what actions can government take to end the silence? Through public education, can we stop demonizing sex offenders? Can we get some facts out there about who sex offenders are? That they are our sons, brothers, fathers, friends, colleagues. That they are most often male, married, employed, religious, and community minded. That they are no more likely to be poor than rich, poorly educated than well educated, homely or handsome.

Through a public education campaign can we belie the myth that there is no hope for sex offenders? That especially over the last decade, for many offenders, treatment has increasingly higher success rates?

How can public policy help get the offenders & potential offenders into treatment? How can we make it OK for each of us to ask if it might be *our* Uncle Joe, *our* son, *our* daughter’s

recreation director, *our* friend or legislative colleague who needs help or intervention? Who do we ask? What if we are wrong? What if we are right?

For example, imagine you are a pedophile, or even just wonder if you may be someone whose sexual attractions include children. Even if you have never offended (and especially if you have) do you dare to seek advice or help? Where? What will happen to you? To your family? Your job? Your reputation? Does Maine provide families or friends with ways to find help? An anonymous Helpline? Or Maine CyberHelp?

If our only choices are (1) earth-shattering humiliation and severe punishment, or (2) silence, which would you choose for yourself, or *your* son, or *your* friend?

The 2nd area of concern for NOW is how to shift focus and funds to prevention, detection, and healing. Many proposals are focused on increasing punishment. But, the punishment phase of “what to do about sex offenders” focuses on the small minority who are convicted, among the very small minority who are accused or prosecuted. It is where we vent our collective outrage, but it does little to increase our powers of observation, prevention, or early intervention.

Prevention/ Detection/ Healing: The hard work, but more important work, is providing thoughtful sex education programs. It is figuring out how and when to educate all our

children about acceptable touching, acceptable imagery, and acceptable sexual activity. Not just so children more clearly know when they are victims, but **also so children know that sexual attraction to younger children may be a disorder, and that disorders can often be treated.**

Children and adults need to learn that, especially around the age of puberty, there is often an opportunity to be better detectives about possible sexual disorders and to make positive interventions.

Demonizing sex offenders, promoting the idea that they have no redeeming qualities, is not helping. Sex offenders often think of themselves as basically good people: honor students, homeowners, hard workers, church attendees, community boosters.

We must teach people that most sex offenders, like most human beings, live most of their lives doing things that are acceptable and expected of them. When we know this, we are empowered to see our funny, hard-working, baseball-playing dad as our abuser. Or our priest, or our lawmakers, or the local Recreation Director.

When we know that most sex offenders lead lives that look like our lives, we are empowered to see our guitar-playing, joke-telling, bar-b-q tending lover as our rapist.

When we understand that our never-abused, well cared for, healthy, drug-free teenager may also be sexually attracted to 5 year olds, we are empowered to offer intervention

without having to believe our son is a monster.

Many of us face temptations, whether alcohol abuse or smoking, shoplifting or over-spending. Most of us, basically good people, succumb to temptations. **We are often in denial about the effects of our actions.** Even when we know we are doing something wrong or potentially hurtful – and we promise ourselves, never again – we sometimes can't seem to stop ourselves. We need help to stop. But, when our actions are illegal, we are afraid to ask for help.

Many NOW members are abuse survivors. It may be why we became feminists. **The current system does not serve as well as it might: abuse survivors, people with harming sexual disorders, or the families and friends of either.**

We will be working on these issues for many years to come. But, we are heartened that so many are stirred to do something. Changing the statute of limitation laws may be helpful for survivors. Increasing the number, & special training, of parole officers for sexual offenders, may help offenders to succeed in treatment. The confounding factors of supplying drugs or alcohol to weaken the victim must be considered. What resources might the Computer Crime Unit best use? Can we ask whether & how safe zones, registries, extreme sentencing effect public safety?

There's a lot to think about. Good luck to us all.

Selected Resources:

***Final Report of the Commission to
Improve Community Safety and Sex
Offender Accountability, 121st Maine
Legislature, January 2004***

***Protecting Our Nation’s Children
From Sexual Predators and Violent
Criminals: What Needs to be Done?***

Hearing before the Subcommittee on
Crime, Terrorism, and Homeland
Security of the Committee on the
Judiciary House of Representatives
109th Congress, June 9, 2005.

(Especially see: Congressional
Testimony of Fred Berlin, M.D.,
Associate Professor, Johns Hopkins
University)

***The Stop Child Molestation Book,
What Ordinary People Can Do In
Their Everyday Lives To Save Three
Million Children***, by Gene G. Abel,
M.D. and Nora Harlow, 2001

Various publications of the **Association
for the Treatment of Sexual Abusers**,
<http://www.atsa.com>, including:

11/3/05 press release *“National Sexual
Offender Treatment/Assault Prevention
Group Files Brief with the Supreme
Court in Opposition to Sex Offender
Residency Restrictions Claiming that
Such Laws Harm Children.”*

*“ATSA Task Force on Children With
Sexual Behavior Problems” 2006*

“Facts About Sex Offenders”

*“Ten Things You Should Know About
Sex Offenders and Treatment”*

Sex Offenses Legislation

MAINE NOW RECOMMENDS

Recommendations are made in the context of tight budgets. It seems there are always too few personnel and resources in all areas from prevention to punishment, including dangerously overflowing corrections facilities. But, this is an area of public policy long-neglected by most, and charged with deep emotion. Policy makers need our input to help prioritize funding and resources, based on our best current understandings.

NOW notes that some policies, even policies with positive effects, may do collateral damage as well. Let's be mindful about policies that may also create problems for victims, survivors, and/or the general public.

Policies that end up isolating offenders are an example. We know isolation of offenders increases risk of re-offending. So, in some cases, reuniting the family is desired by all parties who hope for successful treatment. But, some wonder if Community Notification of the location of offenders may also “out” families, inadvertently identify survivors, especially incest survivors. This can have a “front end” effect too, as incest victims may be deterred from seeking help. With more education and better understanding about sex offenses, the fears and risks of being “outed” may be diminished. What else might help?

•NOW agrees with The Safety Report* to further fund sexual assault “victim” advocates, who play a critical role as community educators. They *“currently provide risk reduction and other prevention-related education programs to students in elementary school through college.”*

•NOW also joins The Safety Report Commission in *“support of funding and resources to ensure that research-based prevention programs continue to exist throughout the schools and communities of the State.”*

•NOW sees the need for more specially trained parole officers & community resources for offenders being followed in our communities. Increasing the number of specially trained parole officers is likely a better use of funding than building bigger prisons.

•NOW recommends use/more use of ankle monitors for offenders released back into the community.

•NOW recommends a well-publicized anonymous Helpline to answer questions about people’s fears and options if a sexual disorder is known or suspected. It may be unnecessary to create a new Helpline, but publicizing where to seek help would fill a critical gap in public education.

•NOW recommends promotion of research-based public education materials to dispel myths about failed treatments for sexual disorders, and to

inform about improved treatment success rates.

- NOW also joins the The Safety Report Commission in its recommendation to give judges greater leeway in sentencing. As we test sex offender assessment tools, we may learn even more about which offenders are likely to respond to treatment, thus lowering recidivism rates. Lengthy mandatory sentences focus on the offense, rather than the offender, and are not recommended. It may be smarter to focus more on successful community-based interventions.

- We now have some good assessment tools for recognizing those most likely to re-offend. Special education of judges, parole officers, & others – similar to judge education that took place on Domestic Violence – could be a wise investment. It might help society determine which offenders need long incarceration vs. those who would do better with shorter sentences, treatment, and community oversight.

- Cyber offenders require a specialized response, and these offenders seem to be on the increase. NOW recommends assessing whether there are enough resources and personnel here.

** “The Safety Report” is the Final Report of the Commission to Improve Community Safety and Sex Offender Accountability, 121st Maine Legislature, January 2004*

SEX OFFENSES

Maine NOW Looks at Specific Bills in the 123rd Maine Legislature

This is a quick look at some of the many bills, most with just a hint of their content, a few in more detail. To see the full language of a bill, and what is happening with it, go to

<http://janus.state.me.us/legis/>

At this writing (2/24/07) many bills have yet to be printed or even added to the “Directory of Bills.” But, it will give **a sense of how lawmakers are approaching the issues.** The selection of bills is NOW’s. Bolding & underlining is NOW’s. The description of bills is NOW’s, though most often taken directly from the bill summary or title.

For the types of bills Maine NOW leans toward see “*Sex Offenses Legislation MAINE NOW RECOMMENDS.*” **The inclusion of an LD in this list implies neither support nor opposition by Maine NOW.**

LD3 (Rep. Richard Sykes) Changes the number of copies of sexually explicit material depicting minors from 10 to 2 in order to give rise to a permissible inference under the Maine Rules of Evidence of intent to distribute.

LD45 (Rep. Lawrence Jacobsen) Establishes the authority of the court to issue a standing criminal restraining order that applies to persons convicted

of certain sex offenses. The order may enjoin the defendant from residing within 10 miles of the victim’s residence or within 10 miles of where the offense occurred. The standing criminal restraining order is available to the court for gross sexual assault crimes as well as any sexual assaults in which the actor is at least 18 years of age and the victim is under 12. [see also LD423]

LD46 (Rep. Richard Cebra) Create mandatory minimum sentences, including 25 years & life (none of which may be suspended) for persons convicted of certain sex offenses against victims under 12 years of age.

LD47 (Rep. Sean Faircloth) Based on a law passed in Washington State, prohibits travel agencies within the State from engaging in travel for commercial sexual purposes.

LD90 (Sen. Courtney) Provide funding for fingerprinting of Education personnel.

LD147 (Rep. Patsy Crockett) Imposes a mandatory condition of probation for a person convicted of a sex offense who is required to be registered on the sex offender registry that the person **reside only in a residence approved by the probation officer.**

LD149 (Rep. Crockett) If a Class B or C crime was committed with the intent to facilitate a sexual assault, and the person is convicted of both the offense that facilitated the sexual assault and

the sexual assault, the sentencing class for the crime that facilitated the sexual assault is one class higher than it would otherwise be.

LD178 (Sen. Ethan Strimling) Modeled on a California statute, this bill creates a 2-year window to revive sexual abuse cases time-barred by the **statute of limitations**.

LD191 (Rep. Crockett) Prevent certain sex offenders from contact with persons under 14 years of age.

LD192 (Rep. Kimberly Silsby) Requiring a map on the Sex Offender Registry displaying offenders' residences.

LD193 (Rep. Jeremy Fischer) Provide funding to the **Computer Crimes Unit** to restrict sex offenders' access to certain websites frequented by minors.

LD194 (Rep. Crockett) **Fund 12 new Probation Officer positions** for better oversight of convicted sex offenders.

LD195 (Rep. Deborah Simpson) Requires notification to a licensed child care facility within a municipality that a sex offender who is conditionally released or discharged may be domiciled, reside, work or go to college or school in that municipality.

LD219 (Rep. Stephen Hanley) Forfeited bail of an offender who is in default of a restitution obligation to be used to satisfy the obligation.

LD220 (Rep. Gerzofsky, Dept. of Public Safety bill) The bill clarifies and expands criminal laws relating to sexual assault in which the victim of the crime is a student at a private or public elementary, secondary or special education school, facility or institution and the perpetrator of the crime either is, or will be, a teacher, employee or other official where the victim is enrolled or is a law enforcement officer where the student resides or is enrolled.

LD238 (Sen. Debra Plowman) Requires a person convicted of a sex offense or a sexually violent offense to submit to having a **DNA** sample taken for the FBI's DNA identification index system.

LD275 (Rep. Peter Edgecomb) This bill amends the law concerning the **admissibility of out-of-court statements** by certain victims of sexual assault in criminal prosecutions. This bill allows the admission of statements made by the victim to another person **when the statements are not considered testimonial**. The bill allows the person to whom the statement was made to repeat the statement in testimony in open court if the statement was made in circumstances having sufficient guarantees of trustworthiness, and the person testifying can be confronted and cross-examined as required under the Constitution of Maine or the United States Constitution.

This will allow a child's therapist, for example, to whom the child disclosed the conduct to testify in court about the

child's statement about that conduct, and the statement can be admitted as **allowable hearsay**. The therapist must be subject to cross-examination and all other rights secured to the accused. This bill applies to statements made by a victim who has a developmental disability as well as to children under 16 years of age. Whether the circumstances have sufficient guarantees of trustworthiness is determined by the facts of each case.

LD294 (Rep. L. Knight) Concerning posting the Registry of Convicted Sex Offenders.

LD322 (Sen. Diamond, Senate Chair of the Public Safety Committee) This resolve directs the Joint Standing Committee on Criminal Justice and Public Safety to review and assess the current resources appropriated to the **Computer Crimes Unit** of the Department of Public Safety. The committee shall determine what impact the new Computer Crimes Forensic Analyst positions and equipment, pursuant to Public Law 2005, chapter 676, have had on the backlog of computer crimes cases and whether additional positions and resources are necessary to aggressively address the proliferation of computer crimes, especially those against children. If necessary, upon completing the review, the committee may introduce legislation to implement its recommendations.

LD351 (Rep. Wesley Richardson) This bill requires municipalities to designate

safe zones to protect minors from sexual offenses and from drug-related offenses. The bill requires courts to treat the commission of a sexual offense within a designated safe children zone, including a municipally created safe zone, as an aggravating sentencing factor.

LD372 (Sen. John Nutting) In order to improve the ability to prosecute certain gross sexual assaults, **this bill amends the crime of gross sexual assault by adding the element of furnishing drugs or intoxicants to a victim in order to substantially impair the victim's power to appraise or control the victim's sexual acts.** Currently, a prosecutor must meet a higher standard by proving that the actor employed or administered the drugs or intoxicants to the victim. The bill also specifies that an actor cannot raise as a defense to gross sexual assault that the victim voluntarily consumed or allowed the administration of the drugs or intoxicants if the victim was 14 or 15 years of age.

LD423 (Rep. Jacobsen) Requires the court to issue a **standing criminal restraining order** that applies to persons convicted of certain sex offenses. The order takes effect when the defendant is released from confinement or at the time of sentencing if no confinement is ordered and continues until modified or revoked by the court for good cause shown. The order must include, but is not limited to, enjoining the defendant from residing **within 10 miles** of the victim's

residence, within 10 miles of where the offense occurred and within **1,000 feet** of a school, day care or playground if there are **fewer than 30,000 residents** in that community. Violation is a Class D crime.

LD446 (Sen. Diamond) This bill proposes that the Joint Standing Committee on Criminal Justice do the following:

1. Review compliance and enforcement of **sex offender registration laws** and identify resources and methods to ensure that all persons required to register do register, verify and update their information as directed;
2. Using other states' models for tiered risk assessment and other examples of sex offender classification to learn from, **create and adopt a system of classification based on risk** to be applied to each person required to register under the Sex Offender Registration and Notification Act of 1999 in order to classify sex offenders based on their **risk of reoffending and the degree of likelihood that they pose a danger to the community**;
3. **Create and adopt processes to apply the risk assessment and evaluate its use** so that due process concerns are met and each risk assessment analysis provides useful information to those in the criminal justice system and others who receive that information;
4. **Educate and support law enforcement so that they can use the sex offender risk assessment information to best inform the public and better ensure public safety**; and

5. Review the current list of registerable sex offenses and determine if changes to the current Maine sex offender registry and to the Maine sex offender registry website should be made.

LD458 (Rep. Patrick) This bill prohibits the burial of a person in a cemetery of the Maine Veterans' Memorial Cemetery System if that person has been convicted of a sexual crime against minors.

LD461 (Introduced by Rep. Simpson) This bill contains the recommendations of the **Human Trafficking Task Force**. The bill **proposes** to:

1. **Enact a law criminalizing involuntary servitude and human trafficking**, making them Class B offenses, with enhancement to Class A in certain circumstances, **and specifying certain defenses that do not apply** to involuntary servitude or human trafficking offenses;
 2. Authorize the court to order forfeiture of assets acquired as a result of human trafficking;
 3. **Give the human trafficking victim rights, restitution and the right to collect damages and compensation** through criminal restitution law and the Victims' Compensation Fund and require rulemaking by the Department of Labor for the purposes of victim restitution;
 4. **Prohibit travel agencies operating within the State from advertising or arranging for travel for commercial sexual purposes**;
 5. **Require** commercial inter-

national **matchmaking organizations** operating within the State **to inform** recruits and clients **of the right to information on the other person's criminal, marital, protection from abuse, harassment and other official records;**

6. Direct the Attorney General to convene a broad working group to address human trafficking issues.

The working group would report to the Legislature by January 15, 2008; and

7. Provide an effective date of January 1, 2008 except that the provisions enacting the Attorney General's working group on human trafficking and the definition of "work loss" and rulemaking in the Department of Labor regarding work loss take effect 90 days after adjournment of the First Regular Session of the 123rd Legislature.

LD477 (Sen. Bartlett) This bill requires that a protection order granting relief not be issued with a finding of abuse against the minor child when the protection order is sought on behalf of a minor child and the only evidence of abuse is from one parent of the minor child against the other parent of the minor child.

LD506 (Rep. W. MacDonald) This bill removes the **statute of limitations** for a civil action based upon the complaint of unlawful sexual contact.

LD514 (Diamond & 16 Co-Sp) **Adds to the factors that a judicial officer must consider before allowing the pretrial release** of a defendant on

personal recognizance or an unsecured appearance bond the determination that the defendant's release will not compromise the safety of the community.

LD518 (Rep. Cebra) This bill expands notification requirements to schools and families regarding persons convicted of sex offenses. The bill requires that a law enforcement agency notify the superintendent of a school in a school district where a registered offender is residing, working or attending school. Upon receipt of that information, notwithstanding any confidentiality laws, the superintendent shall provide that information to all teachers and other school personnel. The bill also requires that a superintendent provide notice of any adjudication for a juvenile crime that if committed by an adult would be gross sexual assault to all parents and guardians of students enrolled in the same school as the adjudicated juvenile.

LD552 (Rep. Thomas Watson) This bill requires a court to award **punitive damages** to a victim of a gross sexual assault if the victim sues the defendant for the gross sexual assault and presents a certified copy of the conviction to the court.

LD583 (Rep. Simpson) This bill gives those professionals who are already mandated reporters of adult or child abuse, neglect or exploitation and social service agencies under contract with the Department of Health and Human Services the option of also disclosing

such limited confidential information related to a reasonable suspicion of animal cruelty, abuse or neglect.

LD584 (Rep Simpson) This bill adds animal control officers to the list of professionals who are mandated to report suspected cases of abuse of children and incapacitated or dependent adults.

LD609 (Sen. Brannigan) This resolve provides a method of assessing children's community behavioral health needs and the services that are being provided. The resolve directs the Department of Health and Human Services to perform 2 assessments and to **impose a moratorium on the elimination of children's community behavioral health services until the assessments have been performed and reviewed.**

LD613 (Rep. Canavan) This bill requires that a judicial officer must determine before ordering a pretrial release whether the release will compromise the public safety. Therefore, **a person with a conviction for a sexual offense would not be released if the judicial officer determined the person would compromise public safety.**

LD815 (Sen. Nass) This bill makes it a Class D crime for a person convicted of certain sex offenses to intentionally or knowingly establish or maintain a **residence or domicile in a municipality that does not have its own police department** or other

resident law enforcement agency or officer.

It also prohibits the Commissioner of Corrections from using any Department of Corrections funds or resources or any other state funds or resources to pay **housing costs** for a person who has been so convicted and sentenced.



The Association for the Treatment of Sexual Abusers

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Incorporated in 1984, the Association for the Treatment of Sexual Abusers is a non-profit, interdisciplinary organization. ATSA was founded to foster research, facilitate information exchange, further professional education and provide for the advancement of professional standards and practices in the field of sex offender evaluation and treatment.

ATSA is an international organization focused specifically on the prevention of sexual abuse through effective management of sex offenders.

- Elimination of sexual victimization.
- The protection of our communities through responsible and ethical treatment of sex offenders.
- The prevention of sexual assault through effective management of sex offenders.
- The maintenance of high standards of professionalism and integrity within its membership.

As a voluntary membership organization, ATSA does not credential its members or certify any individual's fitness to provide services. ATSA recommends that questions about a member's credentials be directed to the appropriate professional licensing department or agency in the member's state or region.



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